

NOT FOR PUBLICATION

OCT 14 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSEPH S. ROOT,

Petitioner - Appellee,

v.

ALICE PAYNE,

Respondent - Appellant.

No. 03-35898

D.C. No. CV-03-05079-RJB

MEMORANDUM*

JOSEPH S. ROOT,

Petitioner - Appellant,

v.

ALICE PAYNE,

Respondent - Appellee.

No. 03-35949

D.C. No.
CV-03-05079-RJB-JKA

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted October 5, 2004**
Seattle, Washington

Before: **KOZINSKI, FERNANDEZ and CLIFTON**, Circuit Judges.

1. The Washington appellate courts' denials of Root's ineffective assistance of counsel claims for failure to show prejudice were neither contrary to nor unreasonable applications of clearly established federal law. See 28 U.S.C. § 2254(d)(1); Yarborough v. Gentry, 124 S. Ct. 1, 4 (2003) (per curiam). The district court erred in finding that the decisions were contrary to and unreasonable applications of Strickland v. Washington, 466 U.S. 668 (1984).

2. The district court was correct to reject Root's remaining challenges based on his right to present a complete defense, statutory overbreadth and equal protection.

The petition for habeas corpus is denied in full.

AFFIRMED IN PART; REVERSED IN PART.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).